



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NOV 07 2011

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SE: T: EP: RA: A2

Re:

Dear

This letter constitutes notice that, with respect the Company's request of April 8, 2008, section 412(c)(7)(A) of the Internal Revenue Code ("Code") and section 304(b) of the Employee Retirement Income Security Act ("ERISA") do not apply to the amendment of the Pension Plan to cease benefit accruals effective December 31, 2007, and the establishment of the Savings Plan effective January 1, 2008.

The Pension Plan is a defined benefit plan. The Pension Plan was amended to cease benefit accruals effective December 31, 2007. The Pension Plan covers the Company's full-time, regular, and on-call employees. Some of these employees are covered by a collective-bargaining agreement with various unions. Benefits under the Pension Plan consist of two components: (1) a final average pay benefit for represented registered nurses, and (2) a cash balance benefit for represented service and maintenance workers and all non-represented employees. Under the amendment ceasing accruals to the Pension Plan, no additional retirement benefits accrue for any participant, but those participants covered by the cash balance benefit continue to accrue an interest credit of 5% while they remained employed.

The Savings Plan was adopted effective January 1, 2008. The Savings Plan is a defined contribution plan with a qualified cash or deferred arrangement under section 403(b) of the Code covering substantially the same group of Company employees covered by the Pension Plan. The Savings Plan provides for a core contribution of 2% of gross earnings for all benefit-eligible employees, with a matching employer contribution of 50% on the first 4% of deferrals for a maximum match of 2% and total contribution of 4%. Certain nurses represented by a union and non-represented employees age 55 and older are "grandfathered" and may receive an additional contribution consisting of a \$25 matching contribution on a quarterly basis.

Section 412(c)(7)(A) of the Code and section 304(b)(1) of ERISA provide that if a waiver of the minimum funding standard under section 431(d) of the Code (section 412(d) prior to PPA '06) and section 303 of ERISA is in effect with respect to a plan that is amended to increase the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable, such waiver shall not apply to any plan year ending on or after the date on which such amendment is adopted. Section 412(c)(7)(B)(i) (section 412(f)(2)(A) prior to PPA '06) and section 304(b)(2)(A) of ERISA provide that section 412(c)(7)(A) of the Code (section 412(f)(1) prior to PPA '06) and section 304(b)(1) of ERISA shall not apply to any plan amendment which the Secretary of Labor determines to be reasonable and which provides only de minimis increases in the liabilities of the plan.

Reorganization Plan No. 4, which became effective December 31, 1978, transferred the authority indicated in Section 412(c)(7)(B)(i) (section 412(f)(2)(A) prior to PPA '06) from the Secretary of Labor to the Secretary of Treasury.

H. R. Report No. 93-807 states, "It is contemplated that generally other plans of the employer may not be established or amended to establish or increase benefits during a period of waiver."

S. Report No. 93-383 states, "The committee intends that in all cases the Service will condition a waiver of funding requirements by providing that the employer may not amend any plan in a way that would increase plan liabilities as long as there are any unfunded waived contributions outstanding under any of his qualified plans."

As described above, the Company amended the Pension Plan to freeze benefit accruals effective December 31, 2007, and simultaneously established the Savings Plan effective January 1, 2008. The Pension Plan was subject to a conditional waiver of the minimum funding standard for the plan year ending December 31, 2004 ("2004 funding waiver") which was granted in a ruling letter dated September 15, 2005. As such, any amendment increasing benefits in the Pension Plan or any other Plan sponsored by the Company covering substantially the same group of employees covered by the Pension Plan is subject to the restrictions of section 412(c)(7)(A) of the Code. Although the conditions of the 2004 funding waiver were violated effectively rendering the waiver retroactively null and void, the Company received a modification of the conditions of the 2004 funding waiver in a ruling letter dated November 3, 2011. In this same ruling letter, the Company received a waiver of the minimum funding standard for the Pension Plan for the plan year ending December 31, 2007 ("2007 funding waiver").

The Company's position is that section 412(c)(7)(A) of the Code and section 304(b) of ERISA do not apply to the amendment to the Pension Plan and the establishment of the Savings Plan because the effect of these actions reduced pension contributions to the

Savings Plan and the cessation of accruals in the Pension Plan had the combined effect of producing a projected overall cost savings to the Company.

The actuarial and other financial information furnished for the remaining years of the Pension Plan's waiver amortization period show the amendment ceasing benefit accruals to the Pension Plan will decrease required contributions to that plan by \$5.9 million, \$6.2 million, and \$6.6 million, for the plan years ending December 31, 2008, 2009, and 2010, respectively. The establishment of the Savings Plan will require the Company to make maximum contributions to that plan of \$4.7 million, \$4.6 million, and \$4.8 million for the plan years ending December 31, 2008, 2009, and 2010, respectively. Thus, the cessation of benefit accruals in the Pension Plan and the establishment of the Savings Plan will result in savings to the Company of approximately \$1.4 million, \$1.6 million, and \$1.8 million for plan years ending December 31, 2008, 2009, and 2010, respectively, as compared to the amount of employer contributions required to be made to the Pension Plan if accruals to that plan were not ceased and the Savings Plan were not established. Over all three relevant plan years, the cost effect is a savings of 10.1%. Thus, cessation of accruals to the Pension Plan and the establishment of the Savings Plan do not produce any increase in plan liabilities during the remaining amortization period of the Pension Plan's 2004 funding waiver.

Because the total amount of the new employer contributions to the Savings Plan, when added to the minimum required contributions under section 412 of the Code to the Pension Plan, does not exceed the required contribution to the Pension Plan prior to the cessation of benefit accruals, there will not be an increase in liabilities. Hence, the restriction on plan amendments found in section 412(c)(7)(A) of the Code and section 304(b) of ERISA does not apply because the establishment of the Savings Plan and the cessation of accruals in the Pension Plan had the combined effect of producing a projected overall cost savings to the Company.

This ruling considers only the application of section 412(c)(7)(A) of the Code and section 304(b)(2) of ERISA, to the amendment described above and does not consider any other issues that may arise in connection with the Plan or the proposed amendment.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

We have sent a copy of this letter to the
and to the

If you require further assistance in this matter, please contact

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. M. Ziegler', with a long horizontal flourish extending to the right.

David M. Ziegler, Manager
Employee Plans Actuarial Group 2